

**STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)**

BEFORE THE CHIEF PROCUREMENT OFFICER

DECISION

In the Matter of Protest of:

CASE No.'s 2009 – 125 and 127

**Diamond Chemical Company, Inc.)
ALCO Soap and Supply Company, Inc.)**

**Department of Corrections)
IFB No. 348158)
Laundry Detergent)**

POSTING DATE:

August 28, 2009

This matter is before the Chief Procurement Officer (CPO) pursuant to two letters of protest from Diamond Chemical Company, Inc. (Diamond) and ALCO Soap and Supply Company (ALCO).¹ With this invitation for bids (IFB), the Department of Corrections (SCDC) attempts to procure laundry detergent and sanitizer. After evaluation of bids, SCDC awarded Item 2 - Detergent, Item 3 - Sanitizer, and Item 4 – Cole Water Detergent - to USA Supply. (Note: Item 1 was not awarded.) In its letter, Diamond protested SCDC's intent to award to U.S.A. Supply (USA) alleging in part:

For Lot 2, Item 03, Sanitizer, the U.S.A. Lease bid amount for Maquat 750-M, with a dilution ratio of 2.4 ozs. Per 125 pound load, does not coincide with the Federal EPA registered label dilution requirements. The Federal EPA registered label for Marquat 750-M clearly states a use dilution rate of 2.4 ozs. per hundredweight. When you multiply 2.4 ozs. Per hundredweight by 1.25 hundredweight (load size) the amount equals 3 ounces.”

The correct dilution ratio for sanitizer laundry is 3 ounces per 125 pound load. Please note that it is a violation of Federal and State laws to recommend dilution ratios that are not in accordance with the federal EPA approved label.

We would also like to point out a mathematical error on Lot 2, Item 02. The cost per load should be \$.53 not \$.50 based on a cost per container of \$375.00. (Copy attached)

¹ The CPO received a third protest against this award from Phenix Supply that was dismissed as untimely filed.

In its letter, ALCO protested SCDC's intent to award Lot 3 (shown in the IFB also as Item 04), Cold Water Detergent, to U.S.A. Supply (USA) alleging in part:

We would like to formally file a protest contending the math calculations on solicitation number 348158, Lot 3. USA Supply submitted a bid for detergent costing \$375.00 per 55 gallon drum with a usage of 10 ounces per load. . . (.53267)(35,000 total loads) = \$18,643.45 not \$17,500 as quoted." (Copy attached)

When the CPO received the protests, they were forwarded to SCDC for comment. SCDC inquired with USA who responded by acknowledging a clerical error in the bid and asking to withdraw its bid.² Randy Edwards wrote, "due to a clerical error, our pricing per wash load was based on a 2.4 ounces per 100 lbs of laundry but should have been 3 ounces per 125 lb. washer." (Copy attached) USA concluded "USA Supply . . . respectfully request permission to withdraw from its bid."

Due to USA's admission that it committed a clerical error in the preparation of its bid, SCDC Procurement Director, Ruthie Bishop, asked the CPO to cancel SCDC's award to USA writing, "SCDC is requesting that Mr. Edwards be allowed to withdraw his bid and that the Chief Procurement Officer cancel the Award for Solicitation 34158 per Regulation 19-445.2085 because it is clearly in the best interest of the State." Ms. Bishop wrote further, "However, SCDC cannot award the bid to the next lowest responsive and responsible bidder due to budget issues. . . SCDC is requesting that Mr. Edwards be allowed to withdraw his bid and that SCDC be granted permission to issue another solicitation for laundry products." (Copy attached)

DETERMINATION

The CPO holds three protests filed against the award to USA Supply, the awarded bidder. USA Supply acknowledges a clerical error in the preparation of its bid, requests approval to withdraw it, and thereby forego the award. SCDC, the procuring agency, acknowledges an error in determining the

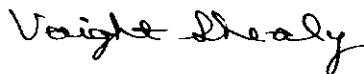
award. All parties involved, Diamond, ALCO, USA Supply, and SCDC, stipulate agreement that USA Supply incurred a clerical error in the preparation of its bid.

Upon inspection of the solicitation documents, the CPO finds that the IFB was unclear regarding the basis of the award. It is apparent that all parties believed the award would be based on the price per load for a 125 lb. load. However, that most essential solicitation requirement, how the low bid would be determined, is not clear in the documents. The solicitation documents read that “Award will be made on cost per load.” [IFB, p. 9. Award Criteria] and “Cost per load” [Amendment #3, pp. 5 – 7, Bidding Schedule]. However, what size load would be used for bid evaluation was never defined in the solicitation. The documents read: “Most of SCDC equipment are 125 lb. equipment, with a few 135 lb, 100 lb, 85 lb, 75 lb, 60 lb, and 50 lb. equipment” [IFB, p. 14, Laundry Detergent and Amendment #3, p. 4]; “For testing purposes vendor must submit enough product for 100 load in a 125 lb washing machine;” [Amendment #3, p. 2, Questions for Bid Number 348158]; and “Vendor must submit enough products for 100 loads for a 125 lb washer at no cost to SCDC.” [Amendment #3, p. 5, Bidding Schedule] [Emphasis theirs] The solicitation hints that the definition of a load is a 125 lb. load, but never absolutely defines it as such.

Therein lies the problem with the entire solicitation. The Code reads, “The invitation for bids must set forth the evaluation criteria to be used. Criteria must not be used in bid evaluation that are not in the invitation for bids. Bids must be evaluated based on the requirements in the invitation for bids and in accordance with the regulations of the board.” [11-35-1520(6)] The supporting regulations read, “The contract shall be awarded to the lowest responsible and responsive bidder(s) whose bid meets the requirements and criteria set forth in the invitation for bids.” [19-445.2090] SCDC never informed bidders in no uncertain terms what evaluation criteria would be the basis for award. Therefore, the solicitation was in violation of law and cannot stand.

² USA did not specify which items of its bid included the clerical error or which bid items were to be withdrawn.

Therefore, the protest is granted. The award to USA Supply is vacated. Further, in accordance with SC Code section 11-35-4310, the CPO finds that the solicitation was in violation of law. The solicitation is cancelled. SCDC is directed to rebid its requirement.



R. Voight Shealy
Chief Procurement Officer
for Supplies and Services

August 28, 2009

Date

Columbia, S.C.

STATEMENT OF RIGHT TO FURTHER ADMINISTRATIVE REVIEW

The South Carolina Procurement Code, in Section 11-35-4210, subsection 6, states:

(6) Finality of Decision. A decision pursuant to subsection (4) is final and conclusive, unless fraudulent or unless a person adversely affected by the decision requests a further administrative review by the Procurement Review Panel pursuant to Section 11-35-4410(1) within ten days of posting of the decision in accordance with subsection (5). The request for review must be directed to the appropriate chief procurement officer, who shall forward the request to the panel or to the Procurement Review Panel, and must be in writing, setting forth the reasons for disagreement with the decision of the appropriate chief procurement officer. The person also may request a hearing before the Procurement Review Panel. The appropriate chief procurement officer and an affected governmental body shall have the opportunity to participate fully in a later review or appeal, administrative or judicial.

Copies of the Panel's decisions and other additional information regarding the protest process is available on the internet at the following web site: www.procurementlaw.sc.gov

FILE BY CLOSE OF BUSINESS: Appeals must be filed by 5:00 PM, the close of business. *Protest of Palmetto Unilect, LLC*, Case No. 2004-6 (dismissing as untimely an appeal emailed prior to 5:00 PM but not received until after 5:00 PM); *Appeal of Pee Dee Regional Transportation Services, et al.*, Case No. 2007-1 (dismissing as untimely an appeal faxed to the CPO at 6:59 PM).

FILING FEE: Pursuant to Proviso 83.1 of the 2009-2010 General Appropriations Act, "[r]equests for administrative review before the South Carolina Procurement Review Panel shall be accompanied by a filing fee of two hundred and fifty dollars (\$250.00), payable to the SC Procurement Review Panel. The panel is authorized to charge the party requesting an administrative review under the South Carolina Code Sections 11-35-4210(6), 11-35-4220(5), 11-35-4230(6) and/or 11-35-4410(4). . . . Withdrawal of an appeal will result in the filing fee being forfeited to the panel. If a party desiring to file an appeal is unable to pay the filing fee because of hardship, the party shall submit a notarized affidavit to such effect. If after reviewing the affidavit the panel determines that such hardship exists, the filing fee shall be waived." 2008 S.C. Act No. 23, Part IB, § 83.1. PLEASE MAKE YOUR CHECK PAYABLE TO THE "SC PROCUREMENT REVIEW PANEL."

LEGAL REPRESENTATION: In order to prosecute an appeal before the Panel, a business must retain a lawyer. Failure to obtain counsel will result in dismissal of your appeal. *Protest of Lighting Services*, Case No. 2002-10 (Proc. Rev. Panel Nov. 6, 2002) and *Protest of The Kardon Corporation*, Case No. 2002-13 (Proc. Rev. Panel Jan. 31, 2003).



Phone (201) 935-4300
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July 10, 2009

Via E-Mail & Fax

protest-mmo@mmo.state.sc.us, vshealy@mmo.state.sc.us
(803) 737-0639

Mr. R. Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

RE: Solicitation 348158, Laundry Detergent

Dear Mr. Shealy:

Diamond Chemical Co. respectfully protests the Intent-To-Award to U.S.A. Lease for the Solicitation referenced above.

On Lot 2, Item 03, Sanitizer, the U.S.A. Lease bid amount for Maquat 750-M, with a dilution ratio of 2.4 ozs. per 125 pound load, does not coincide with the Federal EPA registered label dilution requirements. The Federal EPA registered label for Marquat 750-M clearly states a use dilution rate of 2.4 ozs. per hundredweight. When you multiply 2.4 ozs. per hundredweight by 1.25 hundredweight (load size) the amount equals 3 ounces.

The correct dilution ratio for sanitizing laundry is 3 ounces per 125 pound load. Please note that it is a violation of Federal and State laws to recommend dilution ratios that are not in accordance with the federal EPA approved label.

We would also like to point out a mathematical error on Lot 2, Item 02. The cost per load should be \$.53 not \$.50 based on the cost per container of \$375.00.

In summary, Diamond Chemical Co. protests the Intent-To-Award to U.S.A. Lease for their failure to meet specifications. We hereby respectfully request that you award the bid to Diamond Chemical, the lowest responsive bidder.

Sincerely,
Robert Dattoli
Robert Dattoli
Government Sales Manager

RD/RPL

cc: Ruthie H. Bishop, CPPB (Bishop.ruthie@doc.state.sc.us)
Harold Diamond



07/10/09

Voight Shealy
Chief Procurement Officer
Materials Management Office
1201 Main Street, Suite 600
Columbia, SC 29201

Dear Mr. Shealy,

We would like to formally file a protest contending the math calculations on solicitation number 348158, lot 3. USA Supply submitted a bid for detergent costing \$375.00 per 55 gallon drum with a usage of 10 ounces per load.

55 gallons = 7040 ounces

$$\frac{\$375.00 \text{ per drum}}{7040 \text{ ounces per drum}} = x \quad 10 \text{ ounces per load}$$

$$(\$375.00)(10) = 7040x$$
$$3750 = 7040x$$
$$3750/7040 = x$$
$$x = .53267 \text{ cost per load}$$

$$(.53267)(35,000 \text{ total loads}) = \$18,643.45 \text{ not } \$17,500 \text{ as quoted.}$$

Respectfully,

Mike Krueger
ALCO Sales and Distribution SC
704-999-7769
Kruegerm73@yahoo.com

Kreg Stelzer
ALCO President
704-528-0123
alcokreg@bellsouth.net

USA SUPPLY

Fax 796-2960

269-1588

service tech 719-0202

July 15,2009

To :Ms.Ruthie Bishop /SC Department of Corrections

From:Randy Edwards

Subj: Solicitation # 348158 laundry products

Ms. Bishop,

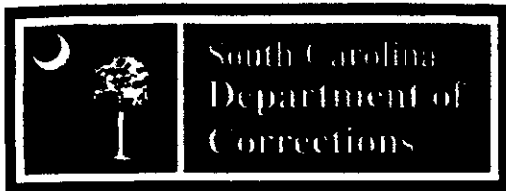
Due to a clerical error , our pricing per wash load was based on 2.4 ounces per 100 lbs of laundry but should have been 3 ounces per 125 lb washer.

Based on this error, USA Supply would loose money and thus respectfully request permission to withdraw from this bid.

Thank you in advance for your consideration.

Sincerely,

Randy Edwards



MARK SANFORD, Governor
JON OZMINT, Director

July 16, 2009

Voight Shealy
Materials Management Office
1201 Main Street
Suite 600
Columbia, SC 29201

Dear Mr. Shealy:

Please find attached an email from Randy Edwards/ USA Supply indicating that due to clerical error, their pricing was based on 2.4 ounces per 100 loads (washer) of laundry but should have been based on 3 ounces per 125 lb washer. Based on this error, USA Supply would loose money and thus respective fully request permission to withdraw from this bid.

SCDC concurs with Mr. Edwards/ USA Supply decision to withdraw from this bid. However, SCDC cannot award the bid to the next lowest responsive and responsible bidder due to budget issues. If SCDC awarded to the next vendor, SCDC would more than triple the cost that SCDC was paying for laundry products. SCDC budget would run the risk of heading for another deficit which would not be beneficial for the agency or in the best interest of the state.

SCDC is requesting that Mr. Edwards be allowed to withdraw his bid and that SCDC be granted permission to issue another solicitation for laundry products.

Sincerely,

Ruthie Bishop, CPPB
Procurement Director
SC Department of Corrections